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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,327	08/31/2006	Harumitsu Miyashita	2006_1330A	9435
52349 7590 01/26/2009 WENDEROTH, LIND & PONACK L.L.P. 2033 K. STREET, NW SUITE 800 WASHINGTON, DC 20006			EXAMINER AGUSTIN, PETER VINCENT	
			ART UNIT 2627	PAPER NUMBER
			MAIL DATE 01/26/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/591,327

**Applicant(s)**

MIYASHITA ET AL.

**Examiner**

Peter Vincent Agustin

**Art Unit**

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

1. This application is a national stage entry (371) of PCT/JP05/19402, filed on October 21, 2005.
2. Claims 15-28 are currently pending.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15, 16, 18, 19 & 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawano et al. (US 6,480,448).

In regard to claim 15, Kawano et al. disclose an access unit (Figure 1) which accesses a record medium (1), the record medium including a user area (Figure 5, information recording area 3) for recording user data which is recorded and regenerated based on an instruction given by a user, the access unit comprising: a recording section (15, 16, 17) for recording test data based on a predetermined test condition in the user area during recording of the user data in the user area (column 2, lines 55-59: “laser output control means which controls a laser output power of a laser device at the time of actually recording information in a disc-like optical recording medium, in accordance with light being reflected from the recording medium in a recording test mode”; patent claim 7: “wherein during a recording operation, said controller controls said laser to record said general data in said program area and controls said laser to record said test data in said program area”); a reading section (22, 31) for reading the test data recorded in the user area

by the recording section; and an adjusting section for referring to the test data read by the reading section, and adjusting an access parameter for accessing the record medium (42, 14, 15, 16).

In regard to claim 16, Kawano et al. disclose a registering section (CPU 42) for registering a test-record area in which the test data is recorded within the user area (see column 9, lines 33-42).

In regard to claim 18, Kawano et al. disclose that the recording section records the test data in a position which is a predetermined distance from, in a radial direction of the record medium, a position in which user data is recorded within the user area (column 9, lines 33-42).

In regard to claim 19, Kawano et al. disclose that the recording section begins recording the test data from a position which is a predetermined distance from, in the radial direction of the record medium, a position in which user data finishes being recorded within the user area, and begins recording user data from a position which is a predetermined distance from, in the radial direction of the record medium, a position in which the test data finishes being recorded (column 9, lines 13-22: "start address", "last address", "data terminating position").

In regard to claim 21, Kawano et al. disclose that the recording section: records the test data beginning from a position which is a predetermined distance from, in the radial direction of the record medium, a position in which user data finishes being recorded within the user area; executes a return from a position in which the test data finishes being recorded to the position in which the user data finishes being recorded; records user data up to the position in which the test data begins being recorded; executes a movement from the position in which the test data begins being recorded to the position in which the test data finishes being recorded; and begins recording user data from the position in which the test data finishes being recorded (column 9,

lines 13-22: “start address”, “last address”, “data terminating position”; also understood from the labels in Figure 5).

In regard to claim 22, Kawano et al. disclose that the recording section: records the test data beginning from a position which is a predetermined distance from, in the radius directions of the record medium, a position in which user data finishes being recorded within the user area; executes a return from a position in which the test data finishes being recorded to the position in which the user data finishes being recorded; and begins recording user data from the position in which the user data finishes being recorded (column 9, lines 13-22: “start address”, “last address”, “data terminating position”; also understood from the labels in Figure 5).

In regard to claim 23, Kawano et al. disclose that the reading section reads user data which is already recorded in the user area (Figure 4, step S11); a record-state detecting section is further provided for detecting a record state of the user data read by the reading section (S11: “evaluate the reproduction signal”); and the recording section records the test data in the user area, based on a record state which is detected by the record-state detecting section (S12-S16).

In regard to claim 23, Kawano et al. disclose that the record-state detecting section detects at least one of a jitter value, an asymmetry value, an error rate and an M-index of the user data read by the reading section (“evaluate the reproduction signal” suggests detection of an error rate).

In regard to claim 25, Kawano et al. disclose that the recording section records the test data in a track adjacent to the user data (as shown in Figure 5).

Claims 26-28 have similar limitations as claim 15 and are rejected on the same grounds.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawano et al. in view of Gushima et al. (US 2005/0018572).

For a description of Kawano et al., see the rejection above. Furthermore, Kawano et al. disclose: in regard to claim 20, a registering section (CPU 42) for registering a test-record area in which the test data is recorded within the user area, an area from a position in which user data finishes being recorded to a position in which the test data begins being recorded, and an area from a position in which the test data finishes being recorded to a position in which user data begins being recorded (column 9, lines 13-22: “start address”, “last address”, “data terminating position”; also understood from the labels in Figure 5).

However, Kawano et al. do not disclose: in regard to claims 17 & 20, that the registering section registers the test-record area as a defective area.

Gushima et al. disclose: in regard to claims 17 & 20, a registering section that registers a test-record area as a defective area (see patent claim 11 and Figure 3).

It would have been obvious to one of ordinary skill in the art at the time of invention to have applied these teachings of Gushima et al. to the device of Kawano et al., the motivation being to prevent problems such as failure of recording of new information or drop of reliability

of recording if a recording area for specific application such as test recording area or drive information recording area becomes unusable (see paragraph 0017).

***Response to Arguments***

7. Applicant's arguments filed on November 24, 2008 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tokumitsu (JP 07-311942) discloses an optical recording control system wherein a trial writing region is registered as a defect block for each recording region having substantially same recording conditions at the time of formatting the medium in order to allow recording under optimal recording conditions over the entire surface of a medium while keeping the compatibility of medium even when a test track is not provided.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Vincent Agustin whose telephone number is (571) 272-7567. The examiner can normally be reached on Monday-Thursday 8:30 AM-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, A. L. Wellington can be reached on (571) 272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter Vincent Agustin/  
Primary Examiner, Art Unit 2627